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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
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UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

-----X Case #: CV-S-03-1550-RLH-(LRL)  
 LOUIS TAKACS, on behalf of himself  
 and others similarly situated,

Plaintiffs,

-against-

JOSHUA MICHAELY, PRESTIGE OF LAS VEGAS,  
 INC., GALINA KUBRAK, AMERICAN REALTY  
 GROUP, INC., AMERICAN REALTY OF CALIFORNIA,  
 INC., and NELLIS MOTEL COMPANY, INC.

Defendants.

-----X

PLAINTIFF'S PROPOSED FINDINGS OF FACT  
 AND CONCLUSIONS OF LAW

Issues of Fact to be Determined by the Court

The parties have agreed that the following factual issues  
 are to be determined by the Court:

1. Did the plaintiff work the hours set forth in the  
 payroll statements and records presented to the Court and relied  
 upon by the plaintiff and if he did not work such hours what were  
 his hours of work each week for the time period July 1, 2003  
 through October 15, 2003?

2. If the plaintiff was owed unpaid wages by the defendants  
 at the time of his discharge from his employment with the  
 defendants what was the plaintiff's normal daily pay and what  
 would 30 days of his normal daily pay be?

1 Conclusions of Law to be Made by the Court

2 The parties have agreed that the following are the issues of  
3 law to be tried and determined by the Court:

4 1. Which of the defendants, if any, besides defendant  
5 Prestige of Las Vegas, Inc., were (was) the plaintiff's employer  
6 within the meaning of the Fair Labor Standards Act (the "FLSA")  
7 and Nevada Law?

8 2. Was the plaintiff an overtime exempt employee within the  
9 meaning the FLSA while employed by Prestige of Las Vegas or any  
10 of the other defendants?

11 The Parties' Stipulated Facts

12 The parties have stipulated to the following relevant facts  
13 which are not disputed and adopted by the Court:

14 During a period of time from July 1, 2003 through October  
15 15, 2003, the plaintiff was paid certain wages as an employee of  
16 at least one of the defendants. The wages paid to the plaintiff  
17 were paid through checks from which tax deductions were taken.  
18 The plaintiff's paychecks were accompanied by statements stating  
19 that the plaintiff was being paid \$25.00 an hour. The statements  
20 accompanying the plaintiff's paychecks also stated that the  
21 plaintiff was working in excess of 40 hours per week and being  
22 paid \$25.00 an hour for all hours worked, including those hours  
23 that were in excess of 40 hours per week. The statements  
24 accompanying the plaintiff's paychecks during this period state  
25 that the plaintiff worked a total of 197.5 hours that were in  
26 excess of 40 hours a week. The defendant Prestige of Las Vegas,  
27

1 Inc., acknowledges that the plaintiff was its employee from July  
2 1, 2003, through October 15, 2003.

3 The Court's Findings of Fact

4 1. The Court finds that the plaintiff, Louis Takacs, was  
5 not paid on a salary basis within the meaning of 29 C.F.R §  
6 541.1(f) and 29 C.F.R. § 541.118(a) as those regulations were in  
7 effect in 2003. Specifically, the plaintiff was not compensated  
8 by means of a pre-determined amount not subject to reduction for  
9 variations in the quality or quantity of the work performed.

10 2. The Court finds that the payroll records of defendant  
11 Prestige of Las Vegas ("Prestige") indicate, as the parties have  
12 stipulated, that the plaintiff worked 197.5 overtime hours that  
13 were in excess of 40 hours per week between July 1, 2003 and  
14 October 15, 2003 and that such records indicate that the  
15 plaintiff was compensated at the rate of \$25.00 per hour for all  
16 hours that he worked.

17 3. The Court finds, based upon the credible testimony of  
18 the plaintiff and the lack of any substantive contrary evidence,  
19 that the records of defendant Prestige are correct and that the  
20 plaintiff did, in fact, work 197.5 overtime hours between July 1,  
21 2003 and October 15, 2003.

22 4. The Court finds, based upon the credible testimony of  
23 the plaintiff and the lack of any substantive contrary evidence,  
24 that the records of defendant Prestige are correct and that the  
25 plaintiff was, in fact, compensated at an hourly rate of \$25.00  
26 an hour for each hour that he worked between July 1, 2003 and  
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1 October 15, 2003.

2 5. The Court finds, based upon the credible testimony of  
3 the plaintiff and the lack of any substantive contrary evidence,  
4 and based upon the records of the plaintiff's hours of work that  
5 the plaintiff has testified were contemporaneously presented to  
6 defendant Prestige, that the plaintiff worked, on average, nine  
7 hours a day and was paid \$25.00 an hour for each such hour of  
8 work and earned an average daily wage of \$225.00 for each day  
9 that he worked between July 1, 2003 and October 15, 2003.

10 6. The Court finds, based upon the credible testimony of  
11 the plaintiff, the testimony of the defendants Joshua Michaely  
12 and Galina Kubrak, and the lack of any substantive contrary  
13 evidence, that the individual defendants Michaely and Kubrak  
14 actively directed and controlled the work of the plaintiff and  
15 the business of defendant Prestige. Specifically, both Michaely  
16 and Kubrak directed the plaintiff to perform substantial work on  
17 their personal residences and to work extended hours, including  
18 on Saturdays and Sundays. Michaely functioned as the day to day  
19 hands on manager of Prestige and was responsible for making  
20 personnel decisions involving the plaintiff, including setting  
21 the plaintiff's rate of compensation and firing the plaintiff.  
22 While Kubrak apparently deferred much of the day to day  
23 management decision making to Michaely, she admits that she did  
24 sign the payroll checks issued to the plaintiff and that those  
25 payroll checks were attached to statements indicating the  
26 plaintiff's hours of work.

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1       7. The Court finds, based upon the credible testimony of  
2 the plaintiff, a letter by defendant's construction manager dated  
3 June 19, 2003 on the letterhead of a American Realty Group of  
4 California, and receipts for expense reimbursement checks issued  
5 to the plaintiff by defendant Nellis Motel Company, Inc., that  
6 the plaintiff was performing substantial work for the defendants  
7 American Realty Group of California and Nellis Motel Company,  
8 Inc. The Court also concludes based upon such evidence that the  
9 defendants American Realty Group of California and Nellis Motel  
10 Company, Inc. shared overlapping and common business operations,  
11 personnel, and management with the defendant Prestige.

12 Conclusions of Law

13       1. The defendants Michaely and Kubrak, through their  
14 control over the plaintiff, the plaintiff's work, and the  
15 defendant corporations, were "employers" or "joint employers" of  
16 the plaintiff within the meaning of the FLSA and Nevada Law.  
17 See, 29 U.S.C. § 203(d) and N.R.S. § 608.011. See, also, Herman  
18 v. RSR Security Services, 172 F.3d 132 (2<sup>nd</sup> Cir. 1999) and Lambert  
19 v. Ackerly, 180 F.3d 997, 1012 (9<sup>th</sup> Cir. 1999). Defendants  
20 Michaely and Kubrak are jointly and severally liable along with  
21 the co-defendants for the plaintiff's damages under the FLSA and  
22 Nevada Law.

23       2. The defendants American Realty of California, Inc., and  
24 Nellis Motel Company, Inc., through their economic integration  
25 with the other defendants, and their involvement with the  
26 plaintiff's employment, are part of a single FLSA "enterprise"

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1 that is jointly liable for the plaintiff's damages under the FLSA  
2 and are also part of a collective employer liable for the  
3 plaintiff's damages under Nevada Law. See, Reich v. Bay, Inc.,  
4 23 F.3d 110 (5<sup>th</sup> Cir. 1994) and Moon v. Kwon, 248 F. Supp.2d 201,  
5 237-239 (S.D.N.Y. 2002).

6 3. Pursuant to 29 U.S.C. § 213(a)(1) certain bona fide  
7 executive, administrative, or professional employees, as those  
8 terms are defined by the Secretary of Labor, who are otherwise  
9 entitled to overtime pay under 29 U.S.C. § 207 are exempt from  
10 such overtime pay requirements. In 2003 the Secretary of Labor  
11 required that an exempt employee under 29 U.S.C. § 213(a)(1) be  
12 compensated on a salary basis as defined in 29 C.F.R § 541.1(f)  
13 and 29 C.F.R. § 541.118(a). The Court determines as a matter of  
14 law that the plaintiff was not subject to such an overtime pay  
15 exemption. In the first instance it is the employer's burden to  
16 establish the applicability of such an exemption and FLSA  
17 exemptions are narrowly construed. See, A.H. Phillips, Inc. v.  
18 Walling, 324 U.S. 490, 498 (1945). Secondly, as the Court has  
19 concluded, the facts presented at trial establish that the  
20 plaintiff was not compensated on a salary basis within the  
21 meaning of 29 C.F.R § 541.1(f) and 29 C.F.R. § 541.118(a). Since  
22 the plaintiff was not compensated on a salary basis he cannot be  
23 an overtime exempt employee under 29 U.S.C. § 213(a)(1).

24 4. The Court has made factual determinations that the  
25 plaintiff worked 197.5 hours of overtime (that were in excess of  
26 40 hours per week) and that his regular rate of pay was \$25.00 an  
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1 hour and that the plaintiff was only paid \$25.00 per hour for  
2 each of these 197.5 hours. Pursuant to 29 U.S.C. § 207 the  
3 plaintiff should have received time and one-half his regular rate  
4 of pay, or \$37.50 an hour, for each of these 197.5 hours. The  
5 Court thus concludes that the plaintiff, as a matter of law, is  
6 owed the difference between the overtime pay rate required by 29  
7 U.S.C. § 207 (\$37.50 per hour) and the hourly rate he was  
8 actually paid (\$25.00 per hour), such difference being \$12.50 per  
9 hour for 197.5 hours. The plaintiff is owed a total of \$2,468.75  
10 in unpaid overtime wages.

11 5. Pursuant to 29 U.S.C. § 216(b) a plaintiff who recovers  
12 unpaid overtime wages owed to him under 29 U.S.C. § 207 is  
13 entitled to liquidated damages equal to the amount of his unpaid  
14 overtime wages. The plaintiff is owed a total of \$2,468.75 in  
15 unpaid overtime wages.

16 6. Pursuant to N.R.S. § 608.020 the plaintiff was entitled  
17 to be paid his full earned wages immediately upon his discharge.

18 7. Pursuant to N.R.S. § 608.040 if the plaintiff was not  
19 paid his full earned wages when they were due (in plaintiff's  
20 case immediately upon his discharge) his wages continued at their  
21 normal daily rate until he was paid his full earned wages or for  
22 30 days, whichever was less.

23 8. The Court has determined that the plaintiff is owed  
24 unpaid overtime wages meaning that the plaintiff was not paid his  
25 full wages at the time of his discharge and within 30 days of his  
26 discharge as required by N.R.S. § 608.020 and § 608.040.

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1           9. Pursuant to N.R.S. § 608.040 the plaintiff is now owed  
2 30 days of wages from the defendants, the Court having made a  
3 factual determination that the plaintiff's daily wages were  
4 \$225.00 per day. The plaintiff is owed a total of \$6,750  
5 pursuant to N.R.S. § 608.040.

6           10. The FLSA, 29 U.S.C. § 216(b), directs that a prevailing  
7 plaintiff shall be awarded costs and a reasonable attorney's  
8 fees. Plaintiff is awarded their costs and reasonable attorney's  
9 fees and plaintiff's counsel is directed to submit an application  
10 for the same pursuant to this Court's Local Rules.

11 Summary

12           Plaintiff shall have judgment against defendants Joshua  
13 Michaely, Prestige of Las Vegas, Inc., Galina Kubrak, American  
14 Realty of California, Inc., and Nellis Motel Company, Inc. in the  
15 total amount of \$11,687.50 plus costs and attorney's fees in an  
16 amount to be determined upon further application of the  
17 plaintiff's counsel.


18  
19 Dated this        day of                   , 2005.  
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Hon. Roger L. Hunt  
UNITED STATES DISTRICT JUDGE

23 Submitted by:

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León Greenberg, Esq.  
26 Attorney for Plaintiff  
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